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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/992,132	11/15/2001	William K. Summers	30011-UT	4628

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EXAMINER

COE, SUSAN D

ART UNIT PAPER NUMBER

1654

DATE MAILED: 09/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	<b>Application No.</b> 09/992,132	<b>Applicant(s)</b> SUMMERS, WILLIAM K.	
	<b>Examiner</b> Susan Coe	<b>Art Unit</b> 1654	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 21 August 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☒ Applicant's reply has overcome the following rejection(s): 112 2<sup>nd</sup> rejection of record.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1,2,4,5,9,13,14,21,36,41,42,82-84,102 and 103.

Claim(s) withdrawn from consideration: 3,6-8,15-20,22-33,37-40,43-81,85,86,88-101 and 104-113.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

### SUPPLEMENT TO ADVISORY ACTION

1. The amendment filed August 21, 2003 has been received and will be entered.
2. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior Office action.

3. Claims 1, 2, 4, 9, 36, 41, 82, 83, and 102 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 4,747,773 for the reasons set forth in the previous Office action.

All of applicant's arguments regarding the 102 rejection of record have been fully considered but are not persuasive. Applicant argues that US '773 does not teach the present invention because applicant does not use a fractionation method to acquire the phosphoester and does not require a 1:1 ratio in saturated and unsaturated fatty acids. However, applicant's claims are drawn to a composition **comprising** a phosphoester and an antioxidant. The transitional phrase "comprising" is open ended and allows for the inclusion of any additional ingredients. Therefore, US '773 is still considered to teach this composition because it teaches a composition that comprises a phosphoester and an antioxidant. In addition, the method used by US '773 to acquire the phosphoester does not appear to create a phosphoester that is different than the phosphoester claimed by applicant. Thus, the fact that US '773 uses a fractionation method to obtain the phosphoester does not lend a patentable difference to the claimed composition.

In addition, applicant argues that the reference uses the antioxidant for a different purpose. However, since applicant's claims are drawn to compositions, not to methods of use, the purpose for adding the antioxidant does not lend a patentable distinction to applicant's claims.

Art Unit: 1654

4. Claims 1, 2, 4, 5, 9, 13, 14, 21, 36, 41, 42, 82-84, 87, 102, and 103 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5,043,323 in view of US Pat. No. 4,474,773 for the reasons set forth in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that neither US '773 nor US '323 teach a net antioxidant effect. However, applicant has pointed out no data to support this assertion of unexpected results.

In addition, applicant argues that US '323 uses the phosphoester as a carrier and not as an active ingredient. However, US '773 does teach that phosphoesters have pharmaceutical benefits. Therefore, when taking the references together, each teach that applicant's claimed ingredients have pharmaceutical effect. Neither reference is meant to stand alone in this rejection.

5. Claims 1, 2, 4, 5, 9, 13, 14, 21, 36, 41, 42, 82-84, 87, 102, and 103 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5,648,377 in view of US Pat. No. 4,474,773 for the reasons set forth in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues against this rejection for the same reasons as set forth for the rejection over US '323 and US '773. Therefore, the rejection is considered valid for the reasons stated above.

6. Claims 1, 2, 4, 5, 9, 13, 14, 21, 36, 41, 42, 82-84, 87, 102, and 103 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5,043,323, US Pat. No. 5,648,377, and Castleman (*The Healing Herbs* (1991), Rodale Press: Pennsylvania; Barberry, pp. 59-61;

Art Unit: 1654

Ginseng, pp. 193-200; Gotu Kola, pp. 205-208; and Turmeric, pp. 355-357) in view of US Pat.

No. 4,474,773 for the reasons set forth in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues against this rejection for the same reasons as set forth for the rejection over US '323 and US '773. Therefore, the rejection is considered valid for the reasons stated above.

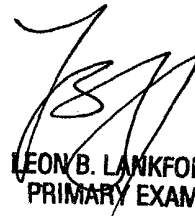
7. No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (703) 306-5823. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:30 and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, can be reached on (703) 306-3220. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Susan Coe, Examiner  
September 3, 2003

  
LEON B. LANKFORD, JR.  
PRIMARY EXAMINER